

IN THE SUPREME COURT OF PENNSYLVANIA

**Nos. 126 MM 2012, 127 MM 2012, 128 MM 2012, 129 MM 2012,
130 MM 2012, 131 MM 2012, 132 MM 2012, 133 MM 2012,
134 MM 2012, 39 WM 2012, 40 WM 2012, 41 WM 2012, 42 MM 2012**

**IN RE: PETITIONS FOR REVIEW CHALLENGING THE
FINAL 2012 LEGISLATIVE REAPPORTIONMENT PLAN**

**BRIEF OF *AMICUS CURIAE* MICHAEL TURZAI AS A
MEMBER OF THE 2011 PENNSYLVANIA LEGISLATIVE
REAPPORTIONMENT COMMISSION IN SUPPORT OF RESPONDENT
2011 LEGISLATIVE REAPPORTIONMENT COMMISSION**

Kathleen A. Gallagher (Pa. I.D. #37950)
John R. McGinley, Jr. (Pa. I.D. #11003)
Katie A. Surma (Pa. I.D. #308849)
Eckert Seamans Cherin & Mellott, LLC
44th Floor U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412.566.6000 (Telephone)

Daniel A. Glass (Pa. I.D. #92039)
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, NW, 12th Floor
Washington, DC 20006-4604
202.659.6600 (Telephone)

*Counsel for Amicus Curiae Michael Turzai, as
a Member of the 2011 Pennsylvania Legislative
Reapportionment Commission*

TABLE OF CONTENTS

	PAGE
STATEMENT OF JURISDICTION.....	1
ORDER IN QUESTION.....	2
STANDARD OF REVIEW AND SCOPE OF REVIEW	3
A. Standard of Review.....	3
B. Scope of Review	3
QUESTIONS PRESENTED.....	5
STATEMENT OF THE CASE.....	5
INTEREST OF <i>AMICUS CURIAE</i>	7
SUMMARY OF ARGUMENT	8
ARGUMENT	9
I. THIS COURT SHOULD AFFORD SUBSTANTIAL DEFERENCE TO THE LEGISLATIVE BODY GIVEN A CONSTITUTIONAL MANDATE TO APPORTION THE COMMONWEALTH IN A MANNER CONSISTENT WITH THE STATE AND FEDERAL CONSTITUTIONS.....	9
A. Reapportionment is a Legislative Process Which Should be Left to the Legislators.....	10

	PAGE
B. The Political Factors Inherent in Section 17 Require a Deep Understanding of the Political and Legislative Backdrop of the Commonwealth.....	13
1. The LRC Has a Unique Understanding of the Communities of Interest in the Commonwealth	13
2. As Representatives of the Legislative Branch, the LRC is in the Best Position to Make Determinations Regarding the Continuity of Representation	16
C. The Legislative History of the Constitutional Convention Confirms the Intent of Amended Sections 16 and 17 That the Reapportionment Process is Legislative in Nature	18
D. Reapportionment is a Political Process Best Left to the Legislative Process.....	21
II. THE PETITIONERS HAVE NOT MET THE HEAVY BURDEN OF PROVING THAT THE 2012 FINAL PLAN VIOLATES THE STATE OR FEDERAL CONSTITUTION	23
A. It is Undisputed That the 2012 Final Plan Provides Population Equality in Compliance with Federal and State Law	26
B. Petitioners Have not Met Their Burden of Proof That the Legislative Districts Set Forth in the 2012 Final Plan Unconstitutionally Divide Political Subdivisions	27
C. Districts Created in the 2012 Final Plan Are Contiguous and Compact.....	31
CONCLUSION.....	33

TABLE OF AUTHORITIES

	PAGE(S)
<i>Cases</i>	
<u>Albert v. 2001 Legislative Reapportionment Comm'n,</u> 790 A.2d 989 (Pa. 2002)	3, 13, 22, 23, 26
<u>Butcher v. Bloom,</u> 203 A.2d 556 (Pa. 1964)	13-14, 22
<u>Com. ex rel. Specter v. Levin,</u> 293 A.2d 15 (Pa. 1972)	22, 23, 26, 31-32
<u>Gaffney v. Cummings,</u> 412 U.S. 735 (1973)	6, 8
<u>Holt v. 2011 Legislative Reapportionment Commission,</u> 38 A.3d 716 (Pa. 2012)	<i>Passim</i>
<u>In re Reapportionment Plan for the Pa. General Assembly</u> <u>(In re 1981 Reapportionment), 442 A.2d 661 (Pa. 1981)</u>	22-23, 26
<u>In re 1991 Pa. Legislative Reapportionment Comm'n</u> <u>(In re 1991 Reapportionment), 609 A.2d 132 (Pa. 1992)</u>	17, 26
<u>Jubelirer v. Rendell,</u> 953 A.2d 514 (Pa. 2008)	10
<u>Nixon v. Shrink Mo. Gov't PAC,</u> 528 U.S. 377 (2000)	21
<u>Perry v. Perez,</u> 132 S.Ct. 934, 181 L.Ed.2d 900 (2012)	21
<u>Reynolds v. Sims,</u> 377 U.S. 533 (1964)	21, 25
<u>Turner Broadcasting System, Inc. v. FCC,</u> 520 U.S. 180 (1997)	21
<u>Vieth v. Jubelirer,</u> 541 U.S. 267 (2004)	31

	PAGE(S)
<i>Constitutional Provisions</i>	
Pennsylvania Constitution, Article II, Section 16.....	<i>Passim</i>
Pennsylvania Constitution, Article II, Section 17.....	<i>Passim</i>
<i>Other Authorities</i>	
Gormley, <u>Racial Mind-Games and Reapportionment</u> , 4 U. Pa. J. Const. L. 735 (2002).....	14
Journal of the Pa. Const. Convention of 1967-1968, Vol. I, p. 81 (Dec. 11, 1967).....	18-20
Miriam-Webster.com, Miriam-Webster 2012	30

STATEMENT OF JURISDICTION

This Court has original jurisdiction of Petitions for Review of a Final Reapportionment Plan certified by the Legislative Reapportionment Commission (“the LRC” or “the Commission”) pursuant to Article II, § 17(d) of the Constitution of the Commonwealth of Pennsylvania.

ORDER IN QUESTION

The Order in Question is the 2012 Final Reapportionment Plan approved by the Commission on June 8, 2012.

STANDARD OF REVIEW AND SCOPE OF REVIEW

A. Standard of Review

A final reapportionment plan “may be found unconstitutional only if the appellant establishes that it is contrary to law.” Holt v. 2011 Legislative Reapportionment Commission, 38 A.3d 716, 733 (Pa. 2012) (citing Pa. Const. Art. II, §17(d)) (“Holt I”). The laws at issue are the mandates of the U.S. Constitution and the Pennsylvania Constitution. The task of determining whether a final reapportionment plan is contrary to law “involves purely legal questions, framed by settled rules of interpretation.” Id. As such, this Court’s standard of review is *de novo*. Id.

B. Scope of Review

In Holt I, this Court held that its scope of review for a reapportionment appeal is “plenary, subject to the restriction, recognized in Albert, that a successful challenge must encompass the final reapportionment plan as a whole, and the recognition in our prior cases that we will not consider claims that were not raised before the LRC.” Holt I, 38 A.3d at 733 (internal citation omitted). The Court stated this “entails consideration of all relevant evidence, and legal authority, that a Final Plan is contrary to law.” Id. In so doing, this Court, for the first time, held that unvetted reapportionment plans created by private citizens can be used as evidence to prove that a Commission’s Final Plan is unconstitutional. The Commission had contended that this Court’s prior rulings precluded any review of such plans and required this Court to view the constitutionality of the Commission’s Proposed Reapportionment Plan without reference to any alternative plan. The Commission further contended that this Court cannot compare its plan to an alternative plan brought forth by an individual citizen because any such

plan had not been properly vetted to determine its accuracy, authenticity, and integrity. This Court disagreed, holding that alternative plans were relevant evidence and that it could consider all relevant evidence that a Final Plan was contrary to law. However, relevance is not the only standard to determine whether evidence is admissible in a court of law.

Technology has allowed individuals incredible access to information and the ability to process such information. Anyone with a computer and the relevant census data can create his or her own reapportionment plan. In the instant series of cases, numerous Petitioners produced their own privately created reapportionment plans. Some of these private plans attempted to reapportion the entire Commonwealth, while others were limited to localized challenges. Under the decision in Holt I, each of the private plans which sought to apportion the entire Commonwealth can be reviewed and analyzed by this Court to determine the constitutionality of the 2012 Final Reapportionment Plan (“2012 Plan” or “2012 Final Plan”).¹ However, unvetted plans created by private citizens are not necessarily viable alternatives and should not be treated as such. What the Court failed to recognize in Holt I is that the issue is not simply whether alternative plans are relevant, but whether they are reliable enough to be entered into evidence. When comparing the 2012 Final Plan to plans such as those proposed by the Petitioners, this Court cannot truly be confident it is comparing apples to apples and thus reliance on such plans is improper.

A scope of review that refrains from examining alternative plans recognizes the practical difficulty in considering such plans. First and foremost, alternative plans are not produced through the legislative process and do not require the cooperation and compromise of Commissioners representing opposing political caucuses. These plans do not have the built-in

¹ The Holt I Court reaffirmed that Pennsylvania law requires a party to challenge a reapportionment plan as a whole. Holt I, 38 A.3d at 717-18. Localized challenges are *per se* improper and must be denied.

checks and balances of the democratic process. They are neither subject to the notice and comment procedures created by the Pennsylvania Constitution, nor are they subject to the legislative process. They are computerized projections created in a vacuum without reference to the people they affect.² In light of the practical difficulties of comparing such plans to the Commission's 2012 Final Plan, *Amicus Curiae* Michael Turzai respectfully requests that this Court reconsider its position on the scope of its review and analyze the constitutionality of the 2012 Final Plan without reference to any privately produced alternatives.

QUESTIONS PRESENTED

QUESTION PRESENTED NO. 1:

Should this Court afford substantial deference to the legislative body given a constitutional mandate to apportion the House and Senate districts in a manner consistent with the State and Federal Constitutions?

QUESTION PRESENTED NO. 2:

Have the Petitioners met the heavy burden of proving that the 2012 Final Apportionment Plan crafted by the Legislative Reapportionment Commission violates the State or Federal Constitution?

STATEMENT OF THE CASE

In 13 separate matters, citizens, acting singly or in groups, filed Petitions for Review of the 2011 Final Reapportionment Plan ("2011 Plan" or "2011 Final Plan") for legislative reapportionment of the Commonwealth of Pennsylvania devised by the Legislative Reapportionment Commission in response to the U.S. decennial census. The Petitioners claimed

² As is discussed in detail in the LRC's Response Brief, each alternative plan appears to have been created with the drafters own self-interested motives in mind. This can be seen by the sheer fact that each plan draws the drafter's area in the way most favorable to the drafter. The Holt plan reunites the township in which she lives while splitting the neighboring municipality. The Costa alternative plan purports to be politically stronger for Costa appellants. The plans submitted by the Schiffer, Brown and Sabatina Petitioners do the same. Unlike the Commission, these drafters are not forced to defend the motives and biases of their plans. Since Petitioners have not provided any support for the decisions they have made, *Amicus Curiae* Michael Turzai will assume for the purposes of this Brief that they were created purely based upon mathematical calculations which fortuitously happened to benefit the drafters.

that the 2011 Final Plan violated Article II, Section 16 (“Section 16”) of the Pennsylvania Constitution in that, among other things, it failed to maintain the integrity of political subdivisions within the Commonwealth. Section 16 provides:

The Commonwealth shall be divided into fifty Senatorial Districts and two-hundred and three Representative Districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each Senatorial District shall elect one Senator and each Representative District one Representative. Unless absolutely necessary, no county, city, incorporated town, borough, township or ward shall be divided in forming either a Senatorial or Representative district.

Pa. Const. Art II, § 16 (as amended).

The Commission contended that the 2011 Final Plan was constitutional and took into account all Federal and State Constitutional mandates. The Commission defended its plan, arguing that the 2011 Final Plan maintained the integrity of political subdivisions, splitting them only when absolutely necessary. However, due to the fact that the multiple commands of the Federal and State Constitutions conflicted at times, the Commission was forced to make certain legislative decisions. In so doing, the LRC followed controlling judicial precedent holding that the U.S. Constitution, as well the Pennsylvania Constitution, required that population equality be the overriding consideration in all legislative reapportionment determinations. In remanding the 2011 Final Plan back to the LRC, this Court held that the overriding objective of population equality, “does not require that reapportionment plans pursue the narrowest possible deviation at the expense of other, legitimate state objectives, such as are reflected in our charter of government.” Holt I, 38 A.3d at 760 (*quoting Gaffney v. Cummings*, 412 U.S. 735, 748-49 (U.S. 1973)).

The LRC has since submitted the 2012 Final Plan and these Petitions followed.

INTEREST OF AMICUS CURIAE

Amicus Curiae Michael Turzai (“Turzai”) is a member of the 2011 Legislative Reapportionment Commission by virtue of his position as Majority Leader of the Pennsylvania House of Representatives. Pa. Const. Art. II, § 17 (“Section 17”). As a member of the LRC, Turzai is one of only five individuals who is constitutionally empowered to reapportion the Commonwealth.

Turzai has a constitutional obligation to ensure that the Commonwealth of Pennsylvania is reapportioned in a manner consistent with the dictates of the United States Constitution and the Constitution of the Commonwealth of Pennsylvania. It is his position that Section 17 creates a legislative process which requires five citizens to reapportion the Commonwealth in a manner which ensures that each citizen of the Commonwealth has an equal vote. In so doing, the members of the Commission have a constitutional mandate to create legislative districts which are contiguous, compact, maintain the integrity of political subdivisions and communities of interest, and ensure the continuity of representation so as to protect the choice of the electorate. The members of the Commission must balance these factors and do that which is “absolutely necessary” to create a reapportionment plan which is approved by a majority of the commissioners. In light of Turzai’s position as a member of the Commission, with his resultant interest in defending the 2012 Final Plan, and his specialized knowledge in this area, Turzai respectfully submits this Brief in support of the 2012 Final Plan.³

³ Simultaneous with the filing of this Brief, *Amicus Curiae* Michael Turzai has filed a Petition for Leave to Participate in Oral Argument.

SUMMARY OF ARGUMENT

The LRC, like its predecessors, constructed the 2011 Final Plan with the objective of satisfying the “one person, one vote” standard dictated by decades of federal precedent as well as the express language of the Pennsylvania Constitution. In Holt I, this Court for the first time held that the 2011 Final Plan was too focused on the federal standard. The Court “recalibrated” the LRC’s priorities, affirming that the multiple commands in Section 16, which embrace contiguity, compactness, and the integrity of political subdivisions, are no less important than the command to create legislative districts as nearly equal in population as practicable. Holt I, 38 A.3d at 760. In remanding the 2011 Final Plan back to the LRC, this Court held that the overriding objective of “one person, one vote,” “does not require that reapportionment plans pursue the narrowest possible deviation at the expense of other, legitimate state objectives, such as are reflected in our charter of government.” Id. (quoting Gaffney, 412, U.S. at 748).

In crafting the 2012 Final Plan, the LRC took heed of this Court’s instruction and refocused its attention on the explicit dictates of Section 16 and those inherent in Section 17. This Court has recognized in its prior rulings, reapportionment is a complex area of law involving multiple intertwined issues and not just population deviations and subdivision splits. Accordingly, due to the particular experience of the Commissioners as the representatives of the legislative branch, and the people whom they represent, the determinations of the LRC are given great deference. Further, Petitioners’ burden in challenging the 2012 Final Plan is not small. Pennsylvania law is well established that the LRC’s decisions are not to be overruled simply because a Petitioner has proffered a purportedly better alternative. The Petitioners must prove to

this Court the 2012 Final Plan specifically violates a provision of the Constitution of this Commonwealth to prevail.⁴ Since they cannot, the 2012 Final Plan must stand.

ARGUMENT

I. THIS COURT SHOULD AFFORD SUBSTANTIAL DEFERENCE TO THE LEGISLATIVE BODY GIVEN A CONSTITUTIONAL MANDATE TO APPORTION THE COMMONWEALTH IN A MANNER CONSISTENT WITH THE STATE AND FEDERAL CONSTITUTIONS

The Commission has formulated a reapportionment plan which complies with the U.S. Constitution and the Pennsylvania Constitution, adheres to the guidance set forth in Holt I, respects the role of the voters, and is fair. In a world of uniform subdivisions with neatly confined communities of interest and evenly dispersed populations within municipal borders, the reapportionment process would be as easy as inputting data into a computer. Unfortunately, this is not such a world. The 2012 Final Plan does not divide the Commonwealth into square or rectangular districts which have precisely the same geographic scope and exactly the same populations.⁵ It does not maintain the integrity of every political subdivision in the Commonwealth.⁶ The 2012 Final Plan is not perfect, but that lack of geometric and/or mathematical perfection does not alter the fact that the 2012 Final Plan is constitutionally sound.

Pennsylvania law on this issue is clear. The Constitution itself states that reapportionment is a legislative process which should be left to the legislators. The dictates of

⁴ The Petitioners have not challenged this Plan's compliance with the U.S. Constitution or the Voting Rights Act and therefore, the Court's focus must be on the issue before it, whether the 2012 Final Plan complies with the dictates of the Pennsylvania Constitution and specifically those set forth in Sections 16 and 17.

⁵ The Commonwealth contains oddly shaped counties, municipalities and wards as well as 45 noncontiguous municipalities, making reapportionment while retaining the integrity of these political subdivisions more difficult than it would seem.

⁶ In the 2012 Final Plan, only 2.6% of the municipalities in the Commonwealth that did not have to be divided were divided. See infra at p. 27.

Section 16 and Section 17 require that the consideration of various political and social factors are best left to the Commissioners who have been chosen for their experience and expertise. The legislative history of the Constitutional Convention confirms this point. Moreover, this Court has continuously recognized the importance of the legislative role of the Commission.

The 2012 Final Plan is a complex organism that incorporates many competing viewpoints and factors. It symbolizes compromise which was the culmination of hard fought negotiations between legislators that represent diverse and distinct interests. Conciliations were made and each Commissioner was forced to prioritize issues and balance a variety of factors.⁷ It is not this Court's province to second guess the legislative prerogative of those decisions. This Court should only remand the 2012 Final Plan if it is proven to violate the Federal or State Constitutions.

A. Reapportionment is a Legislative Process Which Should be Left to the Legislators

In interpreting reapportionment cases, this Court has focused on the explicit text of Section 16 which provides the framework for how the Commonwealth's House and Senate Districts should be apportioned. Section 16 states:

The Commonwealth shall be divided into fifty Senatorial Districts and two-hundred and three Representative Districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each Senatorial District shall elect one Senator and each Representative District one Representative. Unless absolutely necessary, no county, city, incorporated town, borough, township or ward shall be divided in forming either a Senatorial or Representative district.

Pa. Const. Art II, § 16.

In its interpretation of the constitutional mandates of reapportionment, this Court should not simply read Section 16 in isolation and should review the relevant provision *in pari materia*

⁷ Despite the representations made in Senator Costa's Petition, each and every Commissioner was forced to make difficult choices and balance their interests.

with the dictates of Section 17. Jubelirer v. Rendell, 953 A.2d 514, 528 (Pa. 2008) (holding where two provisions of State Constitution relate to the same subject matter, they are to be read *in pari materia*, and the meaning of a particular word cannot be understood outside the context of the section in which it is used).

Section 17 defines the “Commission” charged with the task of reapportioning the Commonwealth and fixes the procedures that the Commission will use in completing its task. The LRC is a function of the legislative branch and “shall consist of five members; four of whom shall be the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them...” Pa. Const. Art II, § 17(b). The four legislative members are then to select a fifth member to serve as the chairman of the Commission. *Id.* The Commission can only act by a majority of its members, thus creating a political process which requires negotiation between the parties. The Pennsylvania Constitution recognizes that fact and requires that the fifth member of the Commission be a neutral party who can assist in mediating between the majority and minority representatives to achieve the desired result of a plan that benefits all citizens of the Commonwealth.⁸ If the legislative members cannot agree upon a fifth member, a majority of the Pennsylvania Supreme Court must appoint the fifth member of the Commission. *Id.* As happened here, when the four legislative members could not agree upon a fifth member of the Commission, this Court appointed LRC Chair the Honorable Stephen J. McEwen, Jr.

Section 17 also sets forth the duties of the Commission. No later than ninety days after either the Commission has been certified, or the population data for the Commonwealth is available, whichever is later in time, the Commission must file a preliminary reapportionment

⁸ The fifth member must be a citizen of the Commonwealth, but cannot be a local, State or Federal official holding an office for which he or she is being compensated. See Pa. Const. Art. II, § 17(b).

plan with the state elections officer. Id. at § 17(c). Subsequent to the filing of the preliminary plan, the Commission has thirty days to make corrections to the plan. Id. Any person aggrieved by the preliminary plan has the same thirty-day period to file exceptions with the Commission. After the initial period of review and comment has expired, the Commission has thirty days in which to prepare and file a final reapportionment plan. Id. Final reapportionment plans are self authenticating. They do not need to be signed by the governor. Id. If an appeal is not filed, the final plan is deemed final and has the force of law without any judicial review. Id. at § 17(d). However, “[i]f the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order.” Id.

This Court’s constitutionally mandated role in the reapportionment process is to protect the integrity of the process. This Court must ensure the constitutionality of the Final Plan, nothing more and nothing less. It cannot act on its own motion and it cannot provide substantive input into the Commission’s decision-making process.⁹ Even if this Court finds the 2012 Final Plan to be unconstitutional, as it did in Holt I, Section 17 dictates that its only recourse is to remand the plan back to the Commission.

The Pennsylvania Constitution specifically states that in making its determinations, the Commission must take into account population equality and minimizing subdivision splits. However, it leaves the manner and process of making the determinations of where to draw district lines and what splits are “absolutely necessary” to the legislative prerogative of the commissioners who are in the best position to make those determinations. Although neither

⁹ The Pennsylvania Constitution only allows this Court to reapportion the Commonwealth on its own motion if the Commission does not file a preliminary, revised or final reapportionment plan pursuant to the deadlines set forth in Section 17. Art. II, § 17(g). Such a process is written into the Constitution as an act of last resort and is not the case here in which the LRC timely submitted a Constitutional plan.

Section 16, nor Section 17, specifically use the words deference or presumption, the process they create clearly requires that the judiciary grant the determinations of the Commission great deference.

B. The Political Factors Inherent in Section 17 Require a Deep Understanding of the Political and Legislative Backdrop of the Commonwealth

In constructing a reapportionment process which is legislative in nature, the framers of Section 17 have given reapportionment a political element. The Constitution “recognizes that communities indeed have shared interests for which they can more effectively advocate when they can act as a united body and when they have representatives who are responsive to those interests” Holt I, 38 A.3d at 745. Inherent in the legislative procedures of Section 17 are certain political factors which require a reapportionment plan to take into account the political dynamics of the situation, including, but not limited to, providing the proper respect to communities of interest and ensuring that the reapportionment process does not frustrate the democratic process. The drafters of Section 17 had this in mind when they determined the composition of the Commission would include the majority and minority leaders of both chambers of the General Assembly. The Constitution creates a process in which these nonpartisan political factors must be considered when reapportioning the Commonwealth. Due to their roles as legislators, the drafters of Section 17 and the people who voted for it determined that the Commissioners are in the best position to analyze these factors.

1. The LRC Has a Unique Understanding of the Communities of Interest in the Commonwealth

“The legislative process envisioned by the Pennsylvania Constitution is particularly suited to the considerations of community interests that appellants claimed were overlooked.” Albert, 790 A.2d at 999-1000; see also Butcher v. Bloom, 203 A.2d 556, 569 (Pa. 1964) (“The

composition of the Legislature, the knowledge which its members from every part of the state bring to its deliberations, its techniques for gathering information, and other factors inherent in the legislative process, make it the most appropriate body for the drawing of lines dividing the state into senatorial and representative districts”). The requirement inherent in Section 17 that the LRC consider and respect certain communities of interest is not to be confused with the explicit standard set forth in Section 16 requiring the Commission to minimize political subdivisions unless absolutely necessary. This Court clarified this historical consideration in Holt I, stating,

Historically, reapportionment bodies have considered ‘communities of interest’ as one legitimate factor in drawing fair and politically sensitive districts...redistricting bodies traditionally take into account a host of intangible communities, seeking to give them, where practicable, a voice in the government without unduly fracturing that voice. Thus, school districts, religious communities, ethnic communities, geographic communities which share common bonds due to locations of rivers, mountains and highways, and a host of other ‘communities of interest’ are routinely considered by districting bodies in order to construct fair and effective maps. Shared racial background, along with political affiliation, ethnic identity, religious affiliation, occupational background, all can converge to create bona fide communities of interest, to the extent that the redistricting body makes an honest effort to draw lines around geographically compact groups in order to give them a voice in the governmental process.

38 A.3d at 746 (citing Gormley, Racial Mind-Games and Reapportionment, 4 U. Pa. J. Const. L. 735, 779-81 (2002) (footnotes omitted)).

Regardless of whether they cross invisible municipal lines, communities of interest are often the building block of neighborhoods. Unlike the mathematical plans of the Petitioners, the 2012 Final Plan has paid particular attention to these building blocks, ensuring that any new political subdivision splits created due to population growth and population shifts did not disrupt these communities. The 2012 Final Plan divides only one county seat which was mathematically able to be united. In the 2012 Final Plan, Pottsville, which is the county seat for Schuylkill

County, is split into multiple legislative districts even though its population would allow it to be united. Pottsville has been split between two house districts since 2001 and has been split in prior plans approved by this Court. Both the Mayor and the Pottsville City Council specifically requested that the city remain divided between the 123rd and 125th Legislative District. The Council expressed that the two-representative structure “has always worked well for Pottsville.”¹⁰ For this reason, among others, the LRC deemed the split appropriate. Other than this one exception, *every* county seat in the Commonwealth that can be united is united under the 2012 Final Plan.

A municipality is a political construct which may, or may not, accurately reflect the communities of interest within it. However, political geography does not necessarily define a person’s interests. The larger the municipality, the more likely it contains divergent interests. Even within municipalities of relatively small population, an individual’s interests may be more closely aligned with their neighbors across a township border than with those located miles away but within the municipal boundary. The 2012 Final Reapportionment Plan complies with this Court’s mandate that it pay heed to communities of interest. The Commission has respected county seats as well as all majority African American and Latino districts ensuring that those minority groups continue to have the ability to participate in the democratic process.

The consideration of municipal borders is important, as noted by its inclusion in the explicit standards of Section 16. The consideration of communities of interest, often as reflected in existing districts, deserves acknowledgement as an implicit and integral part of the Section 17 reapportionment process. It does not appear in Section 16’s enumerated list precisely because it is inherent in the process of Section 17. They are two halves which make a whole in the same

¹⁰ The situation of Pottsville demonstrates that splits are not necessarily negative. Indeed, as the Mayor and Council of Pottsville submitted to the Commission, at times, a well-placed division can give a community more, not less, voice in government. This also highlights the importance of the constitutional system of public input.

manner that Section 16 and 17 work together to provide a complete framework for drawing new legislative districts every ten years.

The Commission's respect for communities of interest is a part of the 2012 Final Plan which will not be viewed on the face of the document. It is a consideration that cannot be quantified or easily distilled into a table, spreadsheet or pie chart. Nonetheless, it is a consideration that is inherent in the legislative process created by Section 17 and thus must be taken into consideration when apportioning the Commonwealth.

2. As Representatives of the Legislative Branch, the LRC is in the Best Position to Make Determinations Regarding the Continuity of Representation

In reapportioning the Commonwealth, the Commission must take into account the benefits of continuity of representation so that the legislature does not have to reinvent itself every ten years. Reapportionment is not a game of musical chairs, but instead a way to even out the legislative districts to account for population growth and movement. This may be accomplished with only minor adjustments to the existing legislative districts. Other times, to compensate for larger population shifts, districts may need to be moved to other parts of the Commonwealth. It is preferable, however, on practical and democratic grounds, to keep the cores of existing districts intact.

Continuity of representation ensures that the voting public, and not reapportionment commissioners, choose legislators. Pennsylvania is a representative democracy, and when at all possible, the legislators chosen by the public should be those seated in the General Assembly. Continuity of representation permits the public, communities of interest, and local governments to foster relationships with their representatives. The reapportionment process should not be a stumbling block or frustration to democracy. It should cause as little upheaval and uncertainty as

possible. On an anecdotal level, the Commission received comments, in oral and written form from scores of citizens who were not only satisfied with their representatives, but who urged the Commission to preserve the general boundaries of their districts. It is those citizens, not an unelected commission, who should decide when it is time to change their legislators.

In the 1991 Reapportionment Decision, this Court dismissed the claims of two incumbents that they were wrongfully deprived their seats by the reapportionment process. This Court explained that Section 16 “does not include a requirement that all senatorial districts be redrawn in such a manner that incumbent senators remain residents of their redrawn districts.” In re 1991 Reapportionment, 609 A.2d at 140. This Court further explained that interests, such as incumbency, are within the discretion of the Commissioners:

The party leaders of both houses of the General Assembly adequately represent the interests of incumbents and it is within their sole discretion as members of the Legislative Reapportionment Commission to consider those interests when renumbering and redrawing the legislative districts.

Id. This Commission has chosen to use its discretion, that is, its legislative prerogative, to respect the role and choice of the voters and to respect, as much as possible, the cores of existing districts. In other words, the LRC has exercised restraint in its tasks so as to respect the choice of the voters and to leave determinations of who will serve in the legislature in their hands.

Consistent with the methodology employed by every prior Commission, this Commission used the cores of existing districts as the starting point of its reapportionment efforts. This decision was made to respect the choice of the voters, and to foster the efficiency that stems from continuity of representation. In doing so, the Commission was able to maintain the cores of all but one district in the Senate and five in the House intact.¹¹ The Commission relied on the

¹¹ Those Districts—Senate District 40 and House Districts 5, 22, 74, 115, and 169—were moved to compensate for population movement in the Commonwealth. This illustrates that the factors in Section 16 are the preeminent factors governing reapportionment.

unique experience of the Commissioners and the knowledge and support of the legislature to advise it on these issues. Tough decisions were made and the decisions of the Commissioners cannot please everyone. However, the Commission's decisions on these issues should be viewed with the weight of its experience and knowledge.

C. The Legislative History of the Constitutional Convention Confirms the Intent of Amended Sections 16 and 17 That the Reapportionment Process is Legislative in Nature

The records from the 1967-1968 Constitutional Convention are instructive about the role that the framers had in mind when they placed the task of reapportionment in a Commission comprised of the leaders of the political parties of each chamber of the General Assembly. The debate between these modern day founding fathers demonstrates that the commission model was chosen to ensure that final apportionment plans were the result of bipartisan negotiation. The convention records demonstrate that the caucus leaders were chosen for their experience and expertise with state politics. Specifically, those leaders are able to give practical perspective to the way the factors mandated by the Constitution of the Commonwealth are to be implemented.

Speaking in favor of the current commission-system, Delegate Fagan,¹² a member of the subcommittee which proposed the current commission framework, explained:

In the makeup of this particular proposal in changing the Constitution, as recommended here to the delegates, it was necessary to arrive at a method in which the reapportionment of the Commonwealth of Pennsylvania would take place. It was finally concluded by the committee that the appropriate group to make this change would be the legislature, because of the fact that they are more conversant with the State and also the legislative and senatorial districts and the method in which it should be divided in the best interests of the citizens of Pennsylvania. But because of the fact that in past considerations by this body they have been unable to conclude an agreement among themselves as to how the state should properly be apportioned, therefore, the duty was passed on to the Pennsylvania Supreme Court.

¹² As the co-chair of the Committee on Legislative Apportionment, Delegate Fagan was particularly suited to speak on these matters. See Journal of the Pa. Const. Convention of 1967-1968, Vol. I, p. 81 (Dec. 11, 1967).